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Paper No. 25

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MAY 7 2004

In re Application of:
Ted A. Loxley :
Serial No.: 09/490,162 :
Filed: January 22, 2000 :
For: **PROCESS AND APPARATUS FOR
CLEANING SILICON WAFERS** :

DECISION ON PETITION
TO WITHDRAW HOLDING
OF ABANDONMENT

This is a decision on the petition filed August 01, 2003, to withdraw the holding of abandonment in the above-identified application under 37 CFR § 1.181. No petition fee is required.

The petition is **GRANTED**.

The application was held abandoned for failure to timely pay the required issue fee in response to the Notice of Allowance and Issue Fee Due (Notice) mailed on January 28, 2003. A Notice of Abandonment was mailed on June 11, 2003.

Petitioner asserts that the Notice mailed on January 28, 2003 was not received. To support this assertion, petitioner provided a statement attesting that a search of the file jacket and docket records showed that the Office action was not received and a copy of the file docket where the Office action would have been entered. Petitioner further asserts that there is no evidence in the application file record indicating that the Notice was actually mailed because the Notice of Allowance could not be found during an actual inspection of the file record.

A review of the file record indicates no irregularity in the mailing of the Notice, and in the absence of any irregularity there is a strong presumption that the Notice was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Notice was not in fact received. The showing required to establish the failure to receive an Office action must include a statement from the practitioner stating that the practitioner did not receive the Office action and attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received. A copy of the docket record where the non-received Office action would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See "Withdrawing the Holding of

"Abandonment When Office Actions Are Not Received" 1156 Official Gazette 53 (November 16, 1993) and M.P.E.P. § 711.03(c).

The petition, including the attachments, is sufficient to establish a showing of non-receipt of the Notice of Allowance of January 28, 2003.

The file record does not contain the Notice of Allowance mailed January 28, 2003, as pointed out in the petition. Accordingly, it would be reasonable to conclude that the Notice of Allowance may not have been mailed but only the Notice of Allowability was mailed on January 28, 2003.

For the above stated reason, the petition is granted. The Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn. The application is restored to pending status.

The application file is being forwarded to the Technology Center 2800 support staff for re-mailing the Notice of Allowability and the Notice of Allowance and Fee(s) Due. The shortened statutory period for response will be reset to run from the date the Notices are re-mailed. Extensions of time are not available under 37 C.F.R. § 1.136.

Inquiries regarding this decision should be directed to Hien H. Phan at (571) 272-1606.

Sharon A. Gibson, Director
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